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THRIFTY PAYLESS, INC.
dba RITE AID #5616

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

BARBARA HUBBARD, Plaintiffs, v. THRIFTY PAYLESS, INC. dba RITE AID # 5616; RANCHO PALOMAR, LP, Defendants.	Case No. 08 CV 1106 W JMA **DEFENDANT THRIFTY PAYLESS, INC. DBA RITE AID # 5616'S ANSWER TO COMPLAINT** Action Filed: June 23, 2008 Trial Date: None

Defendant THRIFTY PAYLESS, INC. dba RITE AID #5616 ("Rite Aid") hereby responds to Plaintiff BARBARA HUBBARD's ("Plaintiff") Complaint as follows:

I. SUMMARY

1. Responding to Paragraph 1 of Plaintiff's Complaint, Rite Aid admits that it is a lessee of a building at 1325 3rd Avenue, Chula Vista, CA 9191. Except so admitted, Rite Aid denies, on information and belief, each and every allegation contained in Paragraph 1 of Plaintiff's Complaint.

2. Responding to Paragraph 2 of Plaintiff's Complaint, Rite Aid denies, upon information and belief, each and every allegation contained in Paragraph

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2 of Plaintiff's Complaint and denies that Plaintiff is entitled to relief as against Rite Aid.

II. JURISDICTION

3. Responding to Paragraph 3 of Plaintiff's Complaint, this is a conclusion of law that is respectfully referred to the Court for determination and as to which no response is required.

4. Responding to Paragraph 4 of Plaintiff's Complaint, this is a conclusion of law that is respectfully referred to the Court for determination and as to which no response is required.

5. Responding to Paragraph 5 of Plaintiff's Complaint, this is a conclusion of law that is respectfully referred to the Court for determination and as to which no response is required.

III. VENUE

6. Responding to Paragraph 6 of Plaintiff's Complaint, this is a conclusion of law that is respectfully referred to the Court for determination and as to which no response is required.

IV. PARTIES

7. Responding to Paragraph 7 of Plaintiff's Complaint, Rite Aid admits that Thrifty Payless, Inc. is a corporation, and that it leases and operates a retail establishment on the subject property. Except as so admitted, Rite Aid denies, upon information and belief, each and every allegation contained in Paragraph 7 of Plaintiff's Complaint.

8. Rite Aid lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 8 of Plaintiff's Complaint, and on that basis, denies each and every allegation contained therein.

V. FACTS

9. Responding to Paragraph 9 of Plaintiff's Complaint, Rite Aid admits that it is a lessee of a building at 1325 3rd Avenue, Chula Vista, California

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91911, and that the building contains a retail establishment open to the public. Except as so admitted, Rite Aid denies, upon information and belief, each and every allegation contain in Paragraph 9 of Plaintiff's Complaint.

10. Rite Aid lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 10 of Plaintiff's Complaint, and on that basis, Rite Aid denies each and every allegation contained therein.

11. Rite Aid lacks sufficient information and belief to respond to the allegations of Paragraph 11 of Plaintiff's Complaint and on that basis denies these allegations.

12. Rite Aid lacks sufficient information and belief to respond to the allegations of Paragraph 12 of Plaintiff's Complaint and on that basis denies these allegations.

13. Rite Aid lacks sufficient information and belief to respond to the allegations of Paragraph 13 of Plaintiff's Complaint and on that basis denies these allegations.

14. Rite Aid lacks sufficient information and belief to respond to the allegations of Paragraph 14 of Plaintiff's Complaint and on that basis denies these allegations.

15. Rite Aid lacks sufficient information and belief to respond to the allegations of Paragraph 15 of Plaintiff's Complaint and on that basis denies these allegations.

VI. FIRST CLAIM

(Americans with Disabilities Act of 1990)

16. Rite Aid incorporates by reference each and every response to the allegations contained in Paragraphs 1 through 15 of this Answer.

17. Paragraph 17 of Plaintiff's Complaint consists of legal theories and contentions to which no response is required and which is respectfully submitted to the Court for determination.

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18. Rite Aid lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 18 of Plaintiff's Complaint, and on that basis, denies each and every allegation contained therein.

Failure to Remove Architectural Barriers in an Existing Facility

19. Paragraph 19 of Plaintiff's Complaint consists of legal theories and contentions to which no response is required and which is specifically submitted to the Court for determination.

20. Paragraph 20 of Plaintiff's Complaint consists of legal theories and contentions to which no response is required and which is specifically submitted to the Court for determination.

21. Rite Aid lacks sufficient information and belief to respond to the allegations of Paragraph 21 of Plaintiff's Complaint and on that basis denies those allegations.

22. Rite Aid lacks sufficient information and belief to respond to the allegations of Paragraph 22 of Plaintiff's Complaint and on that basis denies those allegations.

Failure to Design and Construct an Accessible Facility

23. Rite Aid lacks sufficient information and belief to respond to the allegations of Paragraph 23 of Plaintiff's Complaint and on that basis denies those allegations.

24. Paragraph 24 of the Complaint consists of legal theories and contentions to which no response is required and which is respectfully submitted to the Court for determination.

25. Rite Aid lacks sufficient information and belief to respond to the allegations of Paragraph 25 of Plaintiff's Complaint and on that basis denies those allegations.

Failure to Make an Altered Facility Accessible

26. Rite Aid lacks sufficient information and belief to respond to the

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allegations of Paragraph 26 of Plaintiff's Complaint and on that basis denies those allegations.

27. Paragraph 27 of Plaintiff's Complaint consists of legal theories and contentions to which no response is required and which is respectfully submitted to the Court for determination.

28. Rite Aid lacks sufficient information and belief to respond to the allegations of Paragraph 28 of Plaintiff's Complaint and on that basis denies those allegations.

Failure to Modify Existing Polices and Procedures

29. Paragraph 29 of Plaintiff's Complaint consists of legal theories and contentions to which no response is required and which is respectfully submitted to the Court for determination.

30. Rite Aid lacks sufficient information and belief to respond to the allegations of Paragraph 30 of Plaintiff's Complaint and on that basis denies those allegations.

31. Rite Aid lacks sufficient information and belief to respond to the allegations of Paragraph 31 of Plaintiff's Complaint and on that basis denies those allegations. Rite Aid further denies that Plaintiff is entitled to the relief requested.

32. Rite Aid lacks sufficient information and belief to respond to the allegations of Paragraph 32 of Plaintiff's Complaint and on that basis denies those allegations. Rite Aid further denies that Plaintiff is entitled to the relief requested.

VII. SECOND CLAIM

(Disabled Persons Act)

33. Rite Aid incorporates by reference each and every response to the allegations contained in Paragraphs 1 through 32 of this Answer.

34. Paragraph 34 of Plaintiff's Complaint consists of legal theories and contentions to which no response is required and which is respectfully submitted to the Court for determination.

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35. Paragraph 35 of Plaintiff's Complaint consists of legal theories and contentions to which no response is required and which is respectfully submitted to the Court for determination.

36. Paragraph 36 of Plaintiff's Complaint consists of legal theories and contentions to which no response is required and which is respectfully submitted to the Court for determination.

37. Rite Aid lacks sufficient information and belief to respond to the allegations of Paragraph 37 of Plaintiff's Complaint and on that basis denies those allegations.

38. Rite Aid lacks sufficient information and belief to respond to the allegations of Paragraph 38 of Plaintiff's Complaint and on that basis denies those allegations. Rite Aid further denies that Plaintiff is entitled to the relief requested.

39. Rite Aid lacks sufficient information and belief to respond to the allegations of Paragraph 39 of Plaintiff's Complaint and on that basis denies those allegations. Rite Aid further denies that Plaintiff is entitled to the relief requested.

VII. THIRD CLAIM

(Unruh Civil Rights Act)

40. Rite Aid incorporates by reference each and every response to the allegations contained in Paragraphs 1 through 39 of this Answer.

41. Paragraph 41 of Plaintiff's Complaint consists of legal theories and contentions to which no response is required and which is respectfully submitted to the Court for determination.

42. Paragraph 42 of Plaintiff's Complaint consists of legal theories and contentions to which no response is required and which is respectfully submitted to the Court for determination.

43. Paragraph 43 of Plaintiff's Complaint consists of legal theories and contentions to which no response is required and which is respectfully submitted to the Court for determination.

44. Rite Aid lacks sufficient information and belief to respond to the allegations of Paragraph 44 of Plaintiff's Complaint and on that basis denies those allegations.

45. Rite Aid lacks sufficient information and belief to respond to the allegations of Paragraph 45 of Plaintiff's Complaint and on that basis denies those allegations.

46. Rite Aid lacks sufficient information and belief to respond to the allegations of Paragraph 46 of Plaintiff's Complaint and on that basis denies those allegations. Rite Aid further denies that Plaintiff is entitled to the relief requested.

47. Rite Aid lacks sufficient information and belief to respond to the allegations of Paragraph 47 of Plaintiff's Complaint and on that basis denies those allegations. Rite Aid further denies that Plaintiff is entitled to the relief requested.

IX. FOURTH CLAIM

(Denial of Full and Equal Access to Public Facilities)

48. Rite Aid incorporates by reference each and every response to the allegations contained in Paragraphs 1 through 47 of this Answer.

49. Paragraph 49 of Plaintiff's Complaint consists of legal theories and contentions to which no response is required and which is respectfully submitted to the Court for determination.

50. Paragraph 50 of Plaintiff's Complaint consists of legal theories and contentions to which no response is required and which is respectfully submitted to the Court for determination.

51. Rite Aid lacks sufficient information and belief to respond to the allegations of Paragraph 51 of Plaintiff's Complaint and on that basis denies those allegations.

52. Rite Aid lacks sufficient information and belief to respond to the allegations of Paragraph 52 of Plaintiff's Complaint and on that basis denies those allegations. Rite Aid further denies that Plaintiff is entitled to the relief requested.

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WITHOUT ANY CONCESSION TO ANY CLAIM OR ALLEGATION BY PLAINTIFF, RITE AID ASSERTS THE FOLLOWING AFFIRMATIVE DEFENSES TO PLAINTIFF'S COMPLAINT AND EACH PURPORTED CAUSE OF ACTION THEREIN:

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

53. As a first affirmative defense, Rite Aid alleges, upon information and belief, that Plaintiff's Complaint, and each purported cause of action therein, fails to state facts sufficient to constitute a claim.

SECOND AFFIRMATIVE DEFENSE

(Statute of Limitations)

54. As a second affirmative defense, Rite Aid alleges, upon information and belief, that Plaintiff's Complaint, and each of its claims, is barred by the applicable statute of limitations.

THIRD AFFIRMATIVE DEFENSE

(Failure to Mitigate)

55. As a third affirmative defense, Rite Aid alleges, upon information and belief that, without admitting that Plaintiff has suffered any injury or damage whatsoever, Plaintiff has failed to mitigate his damages.

FOURTH AFFIRMATIVE DEFENSE

(Laches)

56. As a fourth affirmative defense, Rite Aid alleges, upon information and belief, that Plaintiff's Complaint, and each of its causes of action, is barred due to the equitable doctrine of laches.

FIFTH AFFIRMATIVE DEFENSE

(No Discrimination)

57. As a fifth affirmative defense, Rite Aid alleges, upon information and belief, that it is not liable to Plaintiff for any alleged damages because Rite Aid

did not engage in any discriminatory actions as alleged in Plaintiff's Complaint.

SIXTH AFFIRMATIVE DEFENSE

(No Control of Common Areas)

58. As a sixth affirmative defense, Rite Aid alleges, upon information and belief, that it is not liable to Plaintiff for any alleged damages because Rite Aid did not manage or control the common areas and parking areas of the shopping center which is the subject of Plaintiff's Complaint.

SEVENTH AFFIRMATIVE DEFENSE

(Alterations Made Prior Enactment of ADA)

59. As a seventh affirmative defense, any alterations to the subject facilities were made prior to the enactment of the Americans With Disabilities Act, thus such alterations are not required to be remodeled to the maximum extent feasible under section 303 of the ADA and section 54.1 of the California Civil Code, Unruh Civil Rights Act.

EIGHTH AFFIRMATIVE DEFENSE

(Facilities Built Prior To Enactment of the ADA)

60. As an eighth affirmative defense, the subject facilities were built prior to the enactment of the Americans With Disabilities Act, therefore section 303 of the ADA, and section 54.1 of the California Civil Code, Unruh Civil Rights Act, requiring new construction to be accessible to the maximum extent feasible are not applicable.

NINTH AFFIRMATIVE DEFENSE

(Not Readily Achievable)

61. As a ninth affirmative defense, Rite Aid is only required under section 302(b)(2)(A)(iv) of the ADA, and section 54.1 of the California Civil Code, Unruh Civil Rights Act, to remove architectural barriers in their existing facilities if such removal is "readily achievable". The barriers plaintiff refers to in his Complaint cannot be removed under the "readily achievable" standard.

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TENTH AFFIRMATIVE DEFENSE

(Others at Fault)

62. As a tenth affirmative defense to Plaintiff's Complaint and each and every cause of action alleged therein, Rite Aid alleges that all claims against Rite Aid are barred because obligations under the Complaint, if any, are obligations or breach of others for which Rite Aid is not responsible.

ELEVENTH AFFIRMATIVE DEFENSE

(Issue Preclusion/Claim Preclusion)

63. As an eleventh affirmative defense to Plaintiff's Complaint and to each and every cause of action alleged therein, Rite Aid alleges, on information and belief, that Plaintiff's claims are barred under the doctrines of issue preclusion and claim preclusion.

TWELFTH AFFIRMATIVE DEFENSE

(Reservation of Rights)

64. As a twelfth affirmative defense, because Plaintiff's Complaint is couched in broad and conclusory terms, Rite Aid cannot fully anticipate all defenses that may be applicable to the within action. Accordingly, the right to assert additional defenses, if and to the extent that such defenses are applicable, is hereby reserved.

X. PRAYER FOR RELIEF

WHEREFORE, Rite Aid prays for judgment as follows:

1. That Plaintiff take nothing by reason of his Complaint and that judgment be rendered in favor of Rite Aid;
2. That no injunctive relief is necessary and therefore is not awarded by the Court;
3. That Rite Aid be awarded its costs of suit incurred in defense of this action;
4. That Rite Aid be awarded reasonable attorneys' fees, and;

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5. For any other and further relief as the Court considers just and proper.

DATED: July 21, 2008 LURIE, ZEPEDA, SCHMALZ & HOGAN

By: /s/Wayne C. Arnold
Wayne C. Arnold
Attorneys for Defendant
THRIFTY PAYLESS, INC.

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